IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 226 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the Civil Judge? : 1 to 5 No

---

REMESHCHANDRA RATILAL MODI

Versus

M/S BABUBHAI RANCHHODDAS GOLWALA CO.

Appearance:

1. Criminal Revision Application No. 226 of 2002

MR RJ GOSWAMI for Petitioner No. 1

Respondent No.1 - deleted

MR HRIDAY BUCH for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 16/07/2002

ORAL JUDGEMENT

1. RULE. Learned advocate Mr.Buch waives service for respondent No.2.

2. Heard the learned advocates Mr.R.J.Goswami for the applicant-accused and Mr.Hriday Buch for the respondent-complainant. The parties are also present in the Court.

3. This Revision Application is filed challenging the order dated 29.9.2001 passed by the learned Judicial Magistrate, First Class, Bharuch in Criminal Case No.18254 of 2000, convicting the present applicant-accused and sentencing him to simple imprisonment of three months and fine of Rs.2,500/-, under section 138 of the Negotiable Instruments Act, 1881. The said order was challenged by the applicant-accused by filing Criminal Appeal No.24 of 2001. However, the learned Sessions Court dismissed the appeal of the applicant-accused vide order dated 23.5.2002.

4. Both the aforesaid orders are under challenge before this Court.

5. Mr.Goswami, learned advocate for the applicant-accused submitted that the parties have settled the matter and the amount of Rs.10,000/-, being the amount of cheque, has been paid in cash to the complainant in presence of his advocate and hence, submitted to pass an appropriate order in the interest of justice by quashing and setting aside the said orders of conviction passed by the Courts below.

6. Mr.Buch, learned advocate appearing for the respondent-complainant also requested this Court to pass necessary orders in the interest of justice. He placed an affidavit of the partner of the respondent-complainant on record fortifying the submission made on behalf of the applicant-accused.

7. The learned counsel relied upon the judgment of the Supreme Court in P.MOHAN BABU v. D. RAMASWAMY [(2000) 9 SCC 528] to submit that in such cases where original complainant was fully satisfied with the payment to be made in full discharge of the liabilities, the imprisonment part of the sentence should be modified.

8. In view of the facts and submissions discussed hereinabove, by consent, the order of sentence and punishment of the petitioner is modified and the sentence is reduced to the days of imprisonment already undergone by the petitioner and the fine of Rs.2,500/- which is

already paid, as stated at the Bar. The amount of Rs.10,000/- deposited in the trial Court by the petitioner-accused, pursuant to the order dated 5.6.2002 of this Court, shall be refunded to the petitioner on making appropriate application therefor. The Revision Application is partly allowed and Rule is made absolute to the aforesaid extent. Direct Service is permitted.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)